

MEMORANDUM

TO: Foundational Provision Subcommittee Members

FROM: Jim Tomkovicz, Chair

RE: Final Proposals regarding Mistake and Liability for the Acts of Others

DATE: October 25, 2008

The following is a summary of the *final* proposals of the Foundational Provision Subcommittee regarding Mistake and Liability for the Acts of Others.

IGNORANCE OR MISTAKE OF FACT OR LAW

(1) Ignorance or mistake as to a matter of fact or law is a defense if:

(a) because of the ignorance or mistake the defendant did not have the purpose, knowledge, belief, recklessness or negligence that is a required element of the offense; or

(b) the law provides that the state of mind established by such ignorance or mistake constitutes a defense.

(2) Although ignorance or mistake would otherwise afford a defense to the offense charged under subsection (1), the defense is not available if the defendant would be guilty of another offense had the situation been as he supposed. In such case, however, the ignorance or mistake of the defendant shall alter the grade and degree of the offense of which he may be convicted to those of the offense of which he would be guilty had the situation been as he supposed.

(3) A belief that conduct does not legally constitute an offense is a defense to a prosecution for that offense based upon such conduct when:

(a) the statute or other enactment defining the offense is not known to the actor and has not been published or otherwise reasonably made available prior to the conduct alleged; or

(b) he or she acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in: (i) a statute or other enactment; (ii) a judicial decision, opinion or judgment; (iii) an administrative order or grant of permission; or (iv) an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offense.

(4) The defendant must prove a defense arising under Subsection (3) of this Section by a preponderance of evidence.

CRIMINAL LIABILITY FOR THE ACTS OF OTHERS

(1) A person is guilty of an offense if it is committed by his or her own conduct or by the conduct of another person for which he or she is legally accountable, or both. Any person who is guilty of an offense committed by his or her own conduct or by the conduct of another person for which he or she is legally accountable shall be charged, tried, and punished as a principal.

(2) A person is legally accountable for the conduct of another person when:

(a) acting with the kind of culpability that is sufficient for the commission of the offense, he or she causes an innocent or irresponsible person to engage in such conduct; or

(b) he or she is made accountable for the conduct of such other person by the Iowa Code; or

(c) he or she is an accomplice of such other person in the commission of the offense.

(3) A person is an accomplice of another person in the commission of an offense if:

(a) with the knowledge that he or she is promoting or facilitating or will promote or facilitate the commission of the offense, he or she

(i) commands, encourages, or requests such other person to commit it, or

(ii) aids or agrees or attempts to aid such other person in planning or committing it, or

(iii) having a legal duty to prevent the commission of the offense, fails to make proper effort so to do; or

(b) the law otherwise expressly declares that his or her conduct establishes his or conduct complicity.

(4) When an offense requires proof of causation of a particular result, a person who knowingly promotes or facilitates the conduct that causes that result is an accomplice in the commission of the offense if he or she acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.

(5) When an offense requires proof of a particular circumstance, a person who knowingly promotes or facilitates the conduct of the person who commits the offense is an accomplice in the commission of the offense if he or she acts with the kind of culpability, if any, with respect to that circumstance that is sufficient for the commission of the offense.

(6) A person who is legally incapable of committing a particular offense himself may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his or her incapacity.

(7) Unless otherwise provided by the Iowa Code, a person is not an accomplice in an offense committed by another person if:

(a) he or she is a victim of that offense; or

(b) he or she terminates his or her complicity prior to the commission of the offense and

(i) wholly deprives it of effectiveness in the commission of the offense; or

(ii) gives timely warning to the law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense;

(iii) the defendant shall have the burden of proving the defense provided in subsection (b) by a preponderance of the evidence.

(8) An accomplice may be convicted on proof of the commission of the offense and of his or her complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction or has been acquitted.

(9) The guilt of an accomplice in the commission of an offense must be determined upon the facts which show the part that he or she had in the commission of the offense, and does not depend upon the degree of another person's guilt.

(10) When two or more persons, acting in concert, knowingly participate in an offense, each is responsible for the acts of the other done in furtherance of the commission of the offense or escape therefrom, and each person's guilt will be the same as that of the person so acting, unless the act was one which the person could not reasonably expect to be done in the furtherance of the commission of the offense.

The subcommittee recommends **retention** of the following provision, which is currently Section 703.3 of the Iowa Code, as a separate section of the Iowa Code:

ACCESSORY AFTER THE FACT

Any person having knowledge that a public offense has been committed and that a certain person committed it, and who does not stand in the relation of husband or wife to the person who committed the offense, who harbors, aids or conceals the person who committed the offense, with the purpose of preventing the apprehension of the person who committed the offense, commits an aggravated misdemeanor if the public offense committed was a felony, or commits a simple misdemeanor if the public offense was a misdemeanor.